



The following constitutes the order of the court.
Signed November 8, 2013


William J. Lafferty, III
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re

Peni H. Inukihaangana,
Sherry Laufasa,

Debtors.

No. 13-44260
Chapter 13

MEMORANDUM REGARDING JUDICIAL LIEN AVOIDANCE

The above-captioned debtors filed the above-captioned case on July 26, 2013. On September 9, 2013 the debtors filed a Motion to Avoid Judicial Lien pursuant to section 522(f)(1)(A) of the Bankruptcy Code. On October 7, 2013 the debtors filed a request for an entry of order by default, and uploaded a proposed order for the Court's review. The Court returned the order as defective because the debtors' Schedule C did not include a claimed exemption for the real property encumbered by the judicial lien. On October 21, 2013 the debtors filed a Supplemental Brief in Support of Motion to Avoid Judicial Lien. The Court has reviewed the supplemental brief.

1 The Court appreciates the debtors' attention to the matter.
2 The issue is whether it is necessary to claim an exemption on the
3 Schedule C in order to avoid a judicial lien under section
4 522(f)(1)(A). In this case, the debtors did not claim the
5 homestead exemption because the real property encumbered by the
6 judicial lien is fully encumbered by deeds of trusts and the
7 debtors hold no equity in the real property. Supplemental Br. in
8 Supp. Of Mot. To Avoid Judicial Lien of Citibank South Dakota,
9 N.A., 1, Oct. 21, 2013, ECF No. 28. According to the debtors'
10 brief, the language of section 522(f) indicates no exemption must
11 actually be claimed, and many courts do not require an exemption to
12 be claimed. The debtors cite a Fourth Circuit Court of Appeals
13 decision, *Botkin v. DuPont Community Credit Union*, 650 F.3d 396
14 (4th Cir. 2011). *Id.* at 2.

15 The Court acknowledges that under the *Botkin* decision, debtors
16 in the Fourth Circuit are not required to claim property as exempt
17 on the Schedule C. See *Botkin v. DuPont Community Credit Union*,
18 650 F.3d 396, 401 (4th Cir. 2011). However, the *Botkin* decision is
19 not binding in this jurisdiction, and recent decisions by the
20 Bankruptcy Appellate Panel for the Ninth Circuit indicate an
21 exemption must actually be claimed on the Schedule C. See, e.g.,
22 *Green v. Hapo Community Credit Union (In re Green)*, No. 12-1486
23 (Aug. 12, 2013). According to the Bankruptcy Appellate Panel,
24 there are four requirements to avoid a judicial lien under section
25 522(f)(1)(A). The second requirement is that "the property must be
26 listed on the debtor's schedules and claimed as exempt." *Id.* at 9
(quoting *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386,

1 §90-91 (9th Cir. BAP 2003) (internal quotations omitted). A lack
2 of equity in the real property encumbered by the lien does not
3 prevent lien avoidance, but the property must be listed on the
4 schedules and an exemption must be claimed. See *Green v. Hapo* at
5 10. An exemption in the amount of \$0.00 can be claimed on the
6 Schedule C. *Id* at 14. For the reasons stated above, the Court is
7 unwilling to grant the debtors' request for entry of default at
8 this time.

9 ****END OF MEMORANDUM****
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COURT SERVICE LIST

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